

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

EPA Region 5 Records Ctr.



279352

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No.
)	S91-00411M
v.)	
)	
WALERKO TOOL & ENGINEERING)	Hon. R. L. Miller, Jr.
CORPORATION,)	
)	
Defendant.)	

**UNITED STATES' MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT ON LIABILITY**

The United States brings this civil action under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499, 100 Stat. 1613 (1986), to recover from the defendant Walerko Tool & Engineering Corporation ("Walerko") response costs incurred by the United States, and to obtain a declaration of defendant's liability for all future response costs in connection with the Lusher Street Site in Elkhart, Indiana (the "Site").

I. FACTUAL BACKGROUND

A. The Defendants' Operations

The business operations of Walerko commenced in 1952.¹

¹ Exhibit E: E.M. Walerko Deposition ("Dep."), p. 6.
Defendant has incorporated into his responses to Plaintiff's
(continued...)

Generally, Walerko engages in machining, tool and die work at its manufacturing plant located at 1935 West Lusher Avenue in Elkhart, Indiana (the "Facility").² The Facility is located within the Site, a 46-square block area on the southwest side of Elkhart, Indiana, bounded by State Road 19 to the west, Avalon Street to the east, Lusher Street to the south and the St. Joseph River to the north.³ The cleaning solvent trichloroethane ("TCA"), was used as a parts cleaner in Walerko's manufacturing process.⁴ Large machined parts were submerged into tanks holding TCA while smaller parts were dipped into containers holding TCA or wiped off with a TCA-soaked rag.⁵ Periodically, when the tanks and smaller containers of solvent became dirty, Walerko employees disposed of the spent solvent outside of the

¹(...continued)

Interrogatories and Requests for Production of Documents in this case the deposition transcripts of Edward Michael Walerko, Thomas Walerko, Beverly Shaefer and John Grover, taken in the case of United States v. Consolidated Rail Corporation, a/k/a Conrail, Civ. No. 590-00056 (N.D.Ind. 1991). See Exhibit G: Response to Plaintiff's First Set of Interrogatories to Defendant Walerko Tool and Engineering Corporation (December 5, 1991).

² Exhibit D: T. Walerko Dep., p. 23. See note 1 above.

³ Exhibit A: Walerko's Responses to Plaintiff's Requests for Admission ("Admission") No. 10.

⁴ Exhibit G: Defendant's Response to Plaintiff's First Set of Interrogatories ("Defendant's Interrogatory Answer") No. 1; Exhibit B: Landry Declaration ("Dec."), ¶¶ 2-3.

⁵ Exhibit B: Landry Dec., ¶¶ 2-3; Exhibit C: McDaniel Dec. at ¶¶ 2-3; Exhibit D: T. Walerko Dep., p. 106.; Exhibit E: E.M. Walerko Dep., p. 92; Exhibit F: Schaefer Dep., pp. 55-56, 84.

Facility onto the ground, and then refilled the containers with fresh solvent.⁶

B. Government Response Activities

In response to local concerns about drinking water well contamination in the Lusher Street area, the Elkhart County Health Department ("ECHD") conducted an extensive sampling effort at the Site.⁷ The sampling effort demonstrated that, of the 145 sampled wells, 103, or over 70 per cent, showed trichloroethylene ("TCE") and/or TCA contamination.⁸ ECHD requested the assistance of United States Environmental Protection Agency ("EPA") to address the problem. On November 3, 1987, EPA's Technical Assistance Team took samples from several of the same wells ECHD had sampled and confirmed ECHD's results. EPA's sampling indicated the presence of TCA in 42 per cent of the wells in the area and a high concentration of TCA was detected in the drinking well at defendant's business within the Site.⁹ On November 19, 1987, the Regional Administrator for EPA authorized the expenditure of federal funds for a removal action at the Site.¹⁰ This removal action consisted of, inter alia, a

⁶ Exhibit B: Landry Dec., ¶ 2; Exhibit C: McDaniel Dec., ¶ 3.

⁷ Exhibit I: Theisen Dec., Appendix 1 (On-Scene Coordinator's Report), p. 1.

⁸ Id.

⁹ Exhibit I: Theisen Dec., ¶ 9.

¹⁰ Exhibit I: Theisen Dec., ¶ 9. 42 U.S.C. § 9601(23) defines "removal":

(continued...)

contamination study at the Site and providing alternate drinking water to those with contaminated drinking water wells or with drinking water wells threatened by TCE and/or TCA contamination.¹¹ During its extent-of-contamination study at the Site, EPA's analysis of water from Walerko's drinking water well indicated 660 parts per billion (ppb) of TCA.¹² The removal activities at the Site were conducted between November 19, 1987 and August 31, 1988.¹³ Since the filing of the complaint, the United States has incurred and continues to incur additional response costs, including administrative and enforcement costs, with respect to the Site.¹⁴

II. STATUTORY BACKGROUND

CERCLA was originally enacted, and reauthorized, to ensure that hazardous waste sites around the country would be cleaned up

¹⁰(...continued)

" . . . the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes . . . provision of alternative water supplies"

¹¹ Exhibit I: Theisen Dec., ¶ 7.

¹² Exhibit I: Theisen Dec., ¶ 9.

¹³ Exhibit I: Theisen Dec., Appendix 1, p.ii.

¹⁴ Exhibit I: Theisen Dec., ¶ 10.

promptly and that those who were responsible for the release of hazardous substances into the environment would pay the costs of cleanup. See S. Rep. No. 96-848, 96th Cong., 2d Sess. 98, reprinted in, 1 Congressional Research Service, 97th Congress, 2d Sess., A Legislative History of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund), at 405 (1980). By enacting CERCLA, Congress intended "to provide rapid responses to the nationwide threats posed by the 30-50,000 improperly managed hazardous waste sites in this country. . . ." United States v. Chem-Dyne Corp., 572 F. Supp. 802, 805 (S.D. Ohio 1983). See Dedham Water Co. v. Cumberland Farms Dairy, 805 F.2d 1074 (1st Cir. 1989); United States v. Shell Oil Co., 605 F. Supp. 1064, 1068 (D. Colo. 1985); United States v. Reilly Tar & Chemical Corp., 546 F. Supp. 1100, 1112 (D. Minn. 1982).

Section 104 of CERCLA, 42 U.S.C. § 9604(a), authorizes the government to immediately respond to releases or substantial threats of releases of hazardous substances into the environment. Section 107 of CERCLA, 42 U.S.C. § 9607, which establishes liability under CERCLA, ensures "that those responsible for any damage, environmental harm, or injury from chemical poisons bear the costs of their actions." S. Rep. 96-848, 96th Cong. 2d Sess. 13 (1980), 1 Leg. Hist. at 320. In enacting Section 107, Congress clearly intended that:

[S]ociety should not bear the costs of protecting the public from hazards produced in the past by a generator, transporter, consumer, or dump site owner or operator who has profited or otherwise benefited from commerce involving these substances and now wishes to be insulated from any

continuing responsibilities from the present hazards to society that have been created.

Id. at 98.

Section 221 of CERCLA, 42 U.S.C. § 9631, created the Hazardous Substances Response Fund ("Superfund" or the "Fund") to finance federal clean-up and response efforts undertaken pursuant to Section 104(a), 42 U.S.C. § 9604(a). The Fund, however, is limited and is insufficient to provide an adequate remedy to the full national problem of hazardous waste releases from treatment and disposal activities around the country. Therefore, Superfund is a revolving account, financed to a large extent by the recovery of costs expended in the clean-up of hazardous waste sites, such as the Site.

III. ARGUMENT

Liability under CERCLA is strict and joint and several with respect to parties responsible under Section 107(a), 42 U.S.C. § 9607(a), for release or threat of release of hazardous substances. United States v. R.W. Meyer, Inc., 889 F.2d 1497, 1507-08 (6th Cir. 1989), cert. denied, 490 U.S. 1106 (1989); United States v. Monsanto Co., 858 F.2d 160, 167, 171 (4th Cir. 1988), cert. denied, 490 U.S. 1106 (1989). In the present case, there is no genuine issue of material fact in dispute. Thus, the United States is entitled to judgment as a matter of law that the defendant is jointly and severally liable for all federal response costs associated with the Site.

A. Standard of Review for Summary Judgment

Rule 56(c) of the Federal Rules of Civil Procedure provides as follows:

The [summary] judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). Although the facts must be viewed and inferences drawn in the light most favorable to the non-moving party, "The district court is not required to evaluate every conceivable inference which can be drawn from evidentiary matter, but only reasonable ones." Parker v. Fed. Nat. Mortg. Ass'n, 741 F.2d 975, 980 (7th Cir. 1984) (emphasis in original).

The Supreme Court recently held: "Summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986).

The party seeking summary judgment has the burden of demonstrating the absence of any material factual issue that is genuinely in dispute. Dreher v. Sielaff, 636 F.2d 1141, 1143 n.4 (7th Cir. 1980), citing Rose v. Bridgeport Brass Co., 487 F. 2d 804, 808 (7th Cir. 1973). After the moving party has met its burden, the opposing party may not rely on allegations in its pleadings, the mere possibility that future discovery may uncover a factual dispute, or alternative sets of hypothetical facts;

rather the non-moving party must present, by affidavits or otherwise, "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324; Big O Tire Dealers, Inc. v. Big O Warehouse, 741 F.2d 160, 163 (7th Cir. 1984). The purpose of summary judgment procedure is to pierce the pleadings. Big O Tire Dealers, 741 F.2d at 163.

The Supreme Court has recently stressed the requirement that there exist a genuine factual dispute by equating the summary judgment standard with that for a directed verdict at trial: ". . . there is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-250 (1986) (citations omitted).

Use of summary judgment is common in environmental enforcement actions. See, e.g., R.W. Meyer, Inc., 889 F.2d at 1499; Amoco Oil Co. v. Borden, Inc., 889 F.2d 664 (5th Cir. 1989); Kelley v. Thomas Solvent Co., 727 F. Supp. 1532, 1551-52 (W.D. Mich. 1989). Rule 56(c) specifically provides that summary judgment "may be rendered on the issue of liability alone although there is a genuine issue as to the amount of the damages." Fed. R. Civ. P. 56(c). Summary judgment affords the court a sharp tool for cutting out those issues over which there is no substantial controversy. Thus, courts routinely use partial summary judgment to resolve liability issues under CERCLA

Section 107, while leaving the determination of the amount and recoverability of specific costs for a subsequent phase of the action.¹⁵

B. Defendant's Liability

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), imposes liability on the current owner and/or operator of a site, and on owners and operators at the time of disposal of hazardous substances. More specifically, Section 107(a), in pertinent part, provides:

(a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

- (1) the owner and operator of . . . a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) . . . [generators] . . . , and
- (4) . . . [transporters] . . . , from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

¹⁵ E.g., New York v. Shore Realty Co., 759 F.2d 1032 (2d Cir. 1985) (upholding district court's grant of partial summary judgment); United States v. Nicolet, 712 F. Supp. 1205 (E.D. Pa. 1989); United States v. Bliss, 667 F. Supp. 1298 (E.D. Mo. 1987); United States v. Stringfellow, 661 F. Supp. 1053 (C.D. Cal. 1987); United States v. Maryland Bank & Trust Co., 632 F. Supp. 573 (D. Md. 1986); United States v. Conservation Chemical Co., 619 F. Supp. 162, 175 (W.D. Mo. 1985); United States v. Ward, 618 F. Supp. 884, 914 (E.D.N.C. 1985); Fishel v. Westinghouse Electric Corp., 617 F. Supp. 1531, 1541 (M.D. Pa. 1985); United States v. Wade, 577 F. Supp. 1326, 1335-36 (E.D. Pa. 1983) (extent of damages not a necessary element of liability); United States v. South Carolina Recycling and Disposal, Inc., 653 F. Supp. 984, 991-92 (D.S.C. 1984), aff'd, United States v. Monsanto Co., 858 F.2d 160 (4th Cir. 1988).

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

42 U.S.C. § 9607(a).

Thus, the defendant is liable under Section 107(a) of CERCLA if the following elements are established: 1) the Walerko Facility is a "facility"; 2) there has been a "release" or "threatened release" of a "hazardous substance" from the Walerko Facility; 3) Walerko is an "owner" or "operator" of the Facility within the meaning of Section 107(a)(1) and was the "owner" or "operator" at the time of disposal of hazardous substances within the meaning of Section 107(a)(2); and 4) the United States has incurred "response" costs.¹⁶ See, e.g., Monsanto, 858 F.2d at 166-171 United States v. Stringfellow, 661 F. Supp. 1053, 1059 (C.D. Cal. 1987); United States v. Bliss, 667 F. Supp. 1298, 1304 (E.D. Mo. 1987); United States v. Medley, 25 ENV'T REP. CAS. (BNA) 1315, 1317 (D.S.C. 1986); Violet v. Picillo, 648 F. Supp.

¹⁶ The amount of costs incurred is not a necessary element of liability under Section 107 of CERCLA, 42 U.S.C. § 9607. New York v. General Electric Company, 592 F. Supp. 291, 303 (N.D.N.Y. 1984).

1283, 1289 (D.R.I. 1986). Additional cases setting forth the liability scheme include: United States v. Conservation Chemical Co., 619 F. Supp. 162, 184 (W.D. Mo. 1985); United States v. Ward, 618 F. Supp. 884, 893-94 (E.D.N.C. 1985); United States v. Wade, 577 F. Supp. 1326, 1333 (E.D. Pa. 1983); and United States v. South Carolina Recycling and Disposal, ... Inc., (SCRDI), 653 F. Supp. 984, 1005 (D.S.C. 1986), aff'd, United v. Monsanto, 858 F.2d 160 (4th Cir. 1988). Once these elements of liability have been established, Section 107(a) imposes strict liability, i.e., liability without regard to fault, on the defendant. E.g., Monsanto, 858 F.2d at 167. Liability is subject only to the very limited defenses listed in Section 107(b).¹⁷ The United States need not make any further showing to establish liability, such as the volume of the substances involved, the toxicity or hazardousness of the substances, or the role played by the defendant in causing the release or threatened release. See Amoco Oil, 889 F.2d at 669; New York v. Shore Realty Corp., 759 F.2d 1032, 1043-44 (2nd Cir. 1985); Mid Valley Bank v. North Valley Bank, 764 F. Supp. 1377, 1386-87 (E.D. Cal. 1991).

1. The Walerko Facility is a "facility"

CERCLA defines a "facility" as "any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located" 42 U.S.C.

¹⁷ A defendant who would otherwise be liable under Section 107(a) can escape liability only by showing that the release or threatened release was caused solely by an act of God, by an act of war, or, in certain narrow circumstances, by a third party. 42 U.S.C. § 9607(b).

§ 9601(9)(B). It is not disputed that TCA came to be located at the Walerko Facility. Bryan Landry, a former employee, declared that under the direction of his supervisor at Walerko, he disposed of spent TCA "onto the ground outside of, and adjacent to, the back of the Walerko plant".¹⁸ Another former employee, Doug McDaniel, stated that he disposed of used TCE or TCA "into the alley behind the Walerko plant".¹⁹ Furthermore, the defendant admits to having stored, used, or disposed of TCA at its Facility.²⁰ TCA was detected in water samples taken from a drinking well at the Walerko Facility at a concentration of 660 ppb.²¹ Walerko admits that TCA is a "hazardous substance" within the meaning of CERCLA.²² In sum, the Walerko Facility and the adjoining real property located at 1935 W. Lusher Avenue, Elkhart, Indiana is a "facility" under Sections 101(9)(B), 42 U.S.C. § 9601((9)(B), and 107(a), 42 U.S.C. § 9607(a), because it is a site at which hazardous substances have been deposited.

2. There Was a "Release" or "Threatened Release" of "Hazardous Substances" at the Facility

"The term 'release' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping,

¹⁸ Exhibit B: Landry Dec., ¶ 2.

¹⁹ Exhibit C: McDaniel Dec., ¶ 3.

²⁰ Exhibit A: Admission 14.

²¹ Exhibit A: Admission 15; Exhibit I: Theisen Dec., ¶ 9.

²² Exhibit A: Admission 17. TCA is also a listed Hazardous Substance. See 40 CFR 302.4.

leaching, dumping, or disposing into the environment. . . ."²³
42 U.S.C. § 9601(22). The facts demonstrate that defendant's employees poured, emptied, dumped, or disposed a hazardous substance, TCA, onto the ground at the Facility. The defendant admitted using, storing or disposing of TCA at the Walerko Facility.²⁴ Defendant also admitted that TCA is a "hazardous substance" under CERCLA.²⁵ Mr. Landry stated that used TCA was periodically emptied from tanks in which parts were cleaned and dumped outside the plant onto the ground.²⁶ Finally, samples taken from the drinking well at the plant contained 660 ppb of TCA contamination.²⁷

Conclusively, TCA was used by the defendant at the Walerko plant, poured onto the land surface at the Site by employees of the defendant, and found in significant concentrations in ground water samples taken from the drinking well at the Walerko plant. Consequently, there was release, and further threat of release, of a hazardous substance from the plant into the environment. See General Electric Co. v. Litton Business Systems, Inc., 715 F. Supp. 949, 957 (W.D. Mo. 1989), aff'd, 920 F.2d 1415 (8th Cir.

²³ 42 U.S.C. § 9601(8) defines the term "environment":
". . . (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States."

²⁴ Exhibit A: Admission 14.

²⁵ Exhibit A: Admission 17.

²⁶ Exhibit B: Landry Dec., ¶ 2.

²⁷ Exhibit I: Theisen Dec., ¶ 9.

1990), cert. denied, ___ U.S. ___, 111 S.Ct. 1697, 114 L.Ed.2d 91 (1991) (dumping hazardous substances on the ground is a release); Kelley v. Thomas Solvent Co., 727 F. Supp. at 1547; Bliss, 667 F. Supp. at 1305 (spraying substances onto the ground constitutes a release).

3. Walerko is the Owner and Operator of the Facility and was the Owner and Operator of the Facility at the Time of Disposal of a Hazardous Substance

Courts construing the owner and operator elements of CERCLA Section 107(a) have imposed liability on a wide class of persons connected to facilities from which releases of hazardous substances have taken place. In this case, the Court need not reach any novel issues in interpreting the scope of owner operator liability. Defendant does not contest that it is the owner and operator of the Facility and that "hazardous substances" were released therefrom.²⁸ The defendant's ownership and operation of the Facility at the time of the disposal of TCA onto the ground outside of the Facility is also not in dispute.²⁹ Since TCA is a "hazardous substance" under CERCLA, see discussion above, Walerko is liable under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2).

4. The United States Incurred Response Costs While Conducting a Removal Action at the Site

²⁸ Exhibit A: Admissions 6, 8, 15, and 17; Exhibit I: Theisen Dec., ¶ 9.

²⁹ Exhibit A: Admission 8; Exhibit B: Landry Dec., ¶¶ 1 and 2; Exhibit C: McDaniel Dec., ¶¶ 1 and 3.

"Response," as defined by 42 U.S.C. § 9601(25), means "remove, removal, remedy, and remedial action." As amended by SARA § 101(e), "response" explicitly includes all enforcement activities relating to removals and remedial actions. Courts have held response costs to include costs of:

- (a) investigations, monitoring and testing to identify the extent of danger to the public health or welfare or the environment;
- (b) investigations, monitoring and testing to identify the extent of the release or threatened release of hazardous substances;
- (c) planning and implementation of a response action;
- (d) costs associated with the above actions, and to enforce the provisions of CERCLA, including the costs incurred for the staffs of the EPA and Justice Department.

United States v. Northeastern Pharmaceutical & Chemical Co., (NEPACCO), 579 F. Supp. 823, 850 (W.D. Mo. 1984), aff'd, 810 F.2d 726 (8th Cir. 1986); Violet, 648 F. Supp. at 1289-1290 n.6. Thus, response costs include all administrative costs, investigative costs, litigation costs, and attorneys' fees associated with the cleanup and with the government's cost recovery action. SCRDI, 653 F. Supp. at 1007-09; NEPACCO, 579 F. Supp. at 851-52. Proof of this element of liability only requires showing the incurrence of some response costs; a determination of liability does not depend on quantification of those costs. United States v. Mottolo, 695 F. Supp. 615, 630 (D.N.H. 1988) ("liability hinges on whether plaintiffs incurred any response costs"); see also Dedham Water Co. v. Cumberland Farms, Inc., 889 F.2d 1146, 1150 (1st Cir. 1989) (listing

elements of liability and distinguishing liability from amount of recoverable costs).

EPA conducted a study to determine the extent of contamination in the groundwater, and subsequently provided alternate water supplies to residences and businesses whose drinking water wells were contaminated with excessive quantities of TCA and other hazardous substances. These incurred costs are "response costs" as defined at 42 U.S.C. § 9601(25). In addition, EPA and the U. S. Department of Justice have incurred, and continue to incur, administrative and enforcement costs with respect to the Site. As a result of TCA contamination in the groundwater under and downgradient from the Facility, the United States has incurred response costs.³⁰

Proof of consistency with the NCP is not required at the liability stage of a CERCLA § 107 cost recovery action. Inconsistency with the NCP is an issue of the extent of relief and is appropriately reserved for future proceedings. "[C]onsistency or inconsistency with the NCP is not a necessary element of the [government's] motion for partial summary judgement on liability under Section 107(a) of CERCLA and relates only to the recoverability of various cost items which will be addressed in later proceedings in this case." Medley, 25 ENV'T REP. CAS. at 1318.³¹ Therefore, the issue of consistency with

³⁰ Exhibit I: Theisen Dec., ¶¶ 7, 9, 10, 11.

³¹ See also, e.g., Bliss, 667 F. Supp. 1306 n. 6; T & E Indus., Inc. v. Safety Light Corp., 680 F. Supp. 696, 705, 708; (continued...)


the NCP should be reserved for the relief stage of this trial, and should not hinder the granting of a Motion for Partial Summary Judgement on Liability.

IV. CONCLUSION

There is no genuine issue of material fact regarding the liability of the defendant in this case. The United States has established: that the Walerko Facility is a "facility," as defined at 42 U.S.C. § 9601(9), from which there has been a release or threat of a release of a hazardous substance; that the defendant is the owner/operator of the facility from which the release occurred; and that the government has incurred response costs. 42 U.S.C. § 9607(a). Therefore, the defendant is jointly and severally liable for the response costs incurred by EPA in addressing the releases of hazardous substances from the Site. Accordingly, the United States is entitled to judgment that the defendant is liable for response costs incurred by the United States to date and for all response costs to be incurred by the United States in the future.

Respectfully submitted,

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ELLIOT M. ROCKLER

³¹(...continued)
Shore Realty Corp., 648 F. Supp. at 262-63 (determination of consistency "goes more to the recovery of response costs than to the existence of a claim under CERCLA"); United States v. Dickerson, 640 F. Supp. 448, 453 (D. Md. 1986).

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